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Supreme Court, U.S.
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No. ——

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

MARY ANN POTTS and IRWIN A. KOSSACK,
Doctors of Naprapathy,
Petitioners,

v.

STATE OF ILLINOIS, DEPARTMENT OF REGISTRATION AND EDUCATION, GARY L. CLAYTON, DIRECTOR,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

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QUESTION PRESENTED

Whether the State of Illinois may enact legislation regulating the fields of healing arts by requiring all those who practice any form of healing art to be a graduate of an Allopathic School of Medicine or a Chiropractic College, depriving Petitioners, and those similarly situated, who have been allowed to practice their profession for over 80 years from continuing to do so, in contravention of Petitioners' rights to equal protection and due process guaranteed by the Fourteenth Amendment to the United States Constitution.

LIST OF PARTIES

The parties in this Court are as follows:

Petitioners: Mary Ann Potts and Irwin A. Kossack.

Respondent: State of Illinois, Department of Registration and Education, Gary L. Clayton, Director.

In the court from whose judgment review is sought, the Petitioners were appellees and the Respondent was appellant.

An Amicus Curiae brief was filed in opposition to petitioners by thhe Illinois State Medical Society, Saul J. Morse as counsel, 828 South Second Street, Springfield, Illinois.

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STATE OF ILLINOIS, DEPARTMENT OF REGISTRATION AND EDUCATION, GARY L. CLAYTON, DIRECTOR,
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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

Petitioners MARY ANN POTTS and IRWIN A. KOSSACK, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of Illinois, entered in this case on April 25, 1989.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Illinois is reprinted in the appendix to this petition and resulted from a direct appeal to that Court as a result of the ruling from the Seventh Judicial Circuit, Sangamon County, finding the 1987 Medical Practice Act unconstitutional. Said opinion of the Seventh Judicial Circuit is reprinted in the appendix, p. 14a.

JURISDICTION

The opinion of the Supreme Court of the State of Illinois was entered on April 20, 1989, and is reprinted in the appendix, p. 1a. A timely petition for rehearing before the Supreme Court was denied on May 26, 1989, and a copy of said notice is reprinted in the appendix, p. 12a. On June 2, 1989, Justice Ben Miller of the Illinois Supreme Court entered an order staying the mandate of that court pending petitioners' application for writ of certiorari, p. 13a.

The jurisdiction of this court is invoked pursuant to 28 U.S.C. 1257(2).

STATUTE INVOLVED

The Illinois Medical Practice Act of 1987, chapter 111, § 4400, Ill. Rev. Stat. 1987 (applicable parts of which are expressed below).

Section 13. Examination of applicants who seek to practice medicine in all of its branches shall embrace the subjects of which knowledge is generally required of candidates for the degree of doctor of medicine or osteopathy by reputable medical or osteopathic colleges in the United States, and shall be such, in the judgment of the Department, as will determine the qualifications of applicants to practice medicine in all of its branches.

Section 14. Examinations of applicants who seek to practice the treatment of human ailments without the use of drugs and without operative surgery shall be such, in the judgment of the Department, as accord with the knowledge generally required of candidates for the degree of doctor of chiropractic at reputable chiropractic colleges fully accredited by the Commission on Accreditation of the Council of Chiropractic Education or its successor.

Section 49. If any person holds themselves out to the public as being engaged in the diagnosis or treatment of

ailments of human beings; or suggests, recommends or prescribes any form of treatment for the palliation, relief or cure of any physical or mental ailment of any person with the intention of receiving therefor, either directly or indirectly, any fee, gift, or compensation whatsoever; or diagnoses or attempts to diagnose, operate upon, profess to heal, prescribe for, or otherwise treat any ailment, or supposed ailment, of another; or maintains an office for examination or treatment of persons afflicted, or alleged or supposed to be afflicted, by any ailment; or attaches the title Doctor, Physician, Surgeon, M.D., D.O. or D.C. or any other word or abbreviation to their name, indicating that they are engaged in the treatment of human ailments as a business; and does not possess a valid license issued pursuant to this Act, they shall be sentenced as provided in Section 59.

STATEMENT OF THE CASE

This petition seeks a review of a decision of the Supreme Court of the State of Illinois reversing the finding of the Circuit Court of the Seventh Circuit, Sangamon County, that the 1987 Illinois Medical Practice Act is unconstitutional in that said Act denied plaintiffs their property interest in the practice of naprapathy without due process of law.

This action developed upon the application of petitioner, MARY ANN POTTS' application to respondent, THE ILLINOIS DEPARTMENT OF REGISTRATION AND EDUCATION (hereinafter the "Department") for a license to practice the art of naprapathy. Respondent informed Ms. Potts by letter dated April 5, 1985, that her application had been denied as a matter of law based upon the Department's determination that the prior Illinois Medical Practice Act did not contemplate the licensure of naprapaths.

Petitioner subsequently filed a Complaint For Administrative Review (Circuit Court No. 85-MR-128) and the

Circuit Court for the Seventh Judicial Circuit, Sangamon County, on May 7, 1985, requesting judicial review of the administrative ruling of the respondent.

The Circuit Court reversed the decision of the respondent in an order filed on September 10, 1985, finding that respondent had met the educational requirements as provided in Ill. Rev. Stat. 1985, ch. 111, § 4411 and holding that the Medical Practice Act provided for the examination and licensure of naprapaths.

Defendant subsequently filed a motion to certify questions for appeal pursuant to Ill. Rev. Stat. 1985, ch. 110a, § 308(a) and moved the Circuit Court to certify the following questions of law:

1. Whether the Department of Registration and Education erred in its interpretation of the Medical Practice Act, Ill. Rev. Stat. ch. 111, § 4401, et seq. 1983 in ruling that § 4411(2)(b) provides for the licensure of only chiropractors, thereby excluding naprapaths and others as persons seeking licensure to practice "any system or method of treating human ailments without the use of drugs or medicines and without operative surgery"?

2. Whether the Department of Registration and Education has the authority to conduct hearings and to make determinations concerning whether the system or method of treating human ailments known as naprapathy is the practice of medicine under the Medical Practice Act and existing law.

In an opinion dated July 15, 1986, the Illinois Appellate Court for the Fourth District ruled in favor of the petitioners, on both questions, answering the first question in the affirmative and the second question in the negative. In so ruling, the Fourth District ruled that naprapathy was a system of treating human ailments as that term is defined by statute and that respondents' refusal to license naprapaths over the proceeding 65 years had been an error.

On May 22, 1987, the Medical Practice Act of 1987 was enacted and took effect on January 1, 1988. This Act repealed the prior Act and for the first time in the history of acts created for the regulation of the field of healing arts, deleted the language "any system or method of treating human ailments". Thus the new Medical Practice Act of 1987 provides only for the licensure of graduates of medical and chiropractic colleges, requiring that any individual who wished to practice any form of healing art, regardless of their prior training, be a graduate of said institution.

On July 17, 1987, petitioners Dr. MARY ANN POTTS and Dr. IRWIN A. KOSSACK, both naprapaths, filed a Complaint For Administrative Review and declaratory judgment in the Circuit Court for the Seventh Judicial Circuit, Sangamon County (Circuit Court No. 87-MR-166) against respondent, ILLINOIS DEPARTMENT OF REGISTRATION AND EDUCATION, seeking to declare the Medical Practice Act of 1987 unconstitutional.

The Circuit Court consolidated cases No. 85-MR-128 and 87-MR-166 in an order dated February 18, 1988. In this February 18, 1988 order the Circuit Court held that the Medical Practice Act of 1987 was unconstitutional as applied to the practice of naprapathy in violation of petitioner's rights to equal protection under law. In following the Illinois Supreme Court's earlier interpretation of the previous Medical Practice Act, the Circuit Court rules that the 1987 Acts' requirement that petitioners receive their education from competing schools of practice, prior to practicing their own form of healing art was in violation of the equal protection clause. Furthermore, denial of petitioner's right to continue in the practice of their profession, having enjoyed that right for the previous 80 years, was a further denial of petitioner's rights to due process under law.

Respondent filed a direct appeal to the Illinois Supreme Court from the February 18, 1988 order to the Circuit Court. The Illinois Supreme Court reversed the ruling of

the Circuit Court finding the 1987 Act constitutional in that the Illinois legislature has the right to enact reasonable educational requirements in attempts to regulate the field of healing arts.

REASONS FOR GRANTING THE WRIT

The art of naprapathy was developed over 80 years ago by an Iowa physician. Naprapathy can be simply defined as a system of manually applied movements according to naprapathic findings, both passive and active, designed to bring motion, with consequent release of tension into abnormally rigid ligiments, tendons, muscles, and articulations of the human body. Naprapathy's procedures assist the body to maintain a favorable internal environment by releasing points of tension and by the use of rational dietary and hygenic measures and the use of appropriate modalities. Similar definitions of naprapathy have been recognized and employed by several Illinois courts. See *People v. Witte*, 315 Ill. 282 (1925), *People v. Barnett*, 240 Ill. App. 357, 4th Dist. (1926).

Both petitioners are graduates of the Chicago College of Naprapathy, which has been authorized to grant the decree of Doctor of Naprapathy by the Illinois Department of Education. The college requires a four-year curriculum with a minimum of 180 quarter hours of formal training, 60 hours of which is clinical, prior to graduation.

The art of naprapathy has been allowed to flourish in the state of Illinois over the past 80 years. Currently, there are approximately 200 physicians who practice naprapathy in the state of Illinois, many of whom rely upon their practice as their sole means of support.

All three prior Medical Practice Acts in the state of Illinois have allowed the practice and/or licensure of naprapathy. Over 35 individuals applied for and received licenses to practice naprapathy in the State of Illinois under the 1899 and 1917 Medical Practice Acts. (Illinois

Archives, Register of Licensed Drugless Practitioners, 1899 to 1951). After the enactment of the 1923 Act, practitioners of naprapathy were allowed to practice their art without licensure due to defendant's erroneous interpretation of that Act which was ultimately overturned in *Potts v. Department of Registration and Education*, No. 85-MR-128 (printed at 145 Ill. App. 3rd 960, 4th Dist. 1986).

Each constitutional challenge to these prior Medical Practice Acts resulted in a clear pronouncement from the Illinois Supreme Court that Acts of this nature, designed for the regulation of the field of healing arts, must apply equally to all those who practice the various forms of healing arts, without discrimination or favoritism to any group, school, college, or theory of practice, in order to pass constitutional muster. It is clear that the general assembly may regulate the field of healing arts, but in doing so must treat competing schools of practice equally by requiring that all regulations apply equally to those governed.

The 1987 Medical Practice Act, as interpreted by the Illinois Supreme Court, now operates to require all naprapaths, if they are to continue in the practice of their profession, to be graduates of the school of medicine or chiropractic, regardless of their prior training or expertise, and in spite of the realization that these competing schools of practice prescribe treatment in opposition to that prescribed by naprapathy.

PETITIONERS WILL BE FORCED TO FOREGO THEIR LIVELIHOOD AS A RESULT OF THE DISCRIMINATORY FEATURES OF THE 1987 MEDICAL PRACTICE ACT, NEVER BEFORE ACCEPTED BY ANY ILLINOIS COURT.

In determining that the 1979 Medical Practice Act did not violate the equal protection provisions of the Federal and State Constitutions, the Illinois Supreme Court overlooked or misapprehended its earlier decisions in *People*

v. Schaffer, 310 Ill. 574, (1914); *People v. Love*, 298 Ill. 204 (1921); and *People v. Witte*, 315 Ill. 282 (1924).

In each of the Illinois Supreme Court's earlier decisions interpreting the three previous Medical Practice Acts in *Schaffer*, *Love* and *Witte*, the Court was faced with the issue of whether the existing Medical Practice Act was discriminatory in its application to osteopaths, chiropractors, and naprapaths, respectively. In declaring those prior Acts unconstitutional, or affirming them, the Illinois Supreme Court based its decision on considerations of fairness and the equal treatment of those who were similarly situated. Those Acts which required practitioners of one school of healing art to obtain their education in competing schools and those Acts which, by their implication, provided for inconsistent levels of education among those similarly situated, were rejected by the court as unconstitutionally discriminatory. In declaring the Medical Practice Act of 1899 unconstitutional in *People v. Shaffer*, the court specifically rejected the contention that the legislature may choose to regulate the various forms of healing arts by requiring that all those who engaged in a particular practice receive their education in a particular school, regardless of the competency of competing schools and the discriminatory burden placed upon those who follow a contrary school of practice. The Medical Practice Act of 1899 required that all those who wished to engage in the practice of surgery first obtain their education in an allopathic school of medicine. Schaffer, an osteopath, argued that he could receive a similar education in his own school of practice and that the Act discriminated against him by requiring repetitive, burdensome, or unnecessary educational requirements. The court agreed and declared the 1899 Act unconstitutional in that it discriminated against applicants for a license to treat human ailments who were educated in osteopathy and in favor of those who were educated in medicine and surgery in allopathic medical colleges.

The Illinois Supreme Court's holding in the case at bar flies in the face of its earlier holding in *Schaffer*. The language of *Schaffer* is timeless in its applicability to the issue at hand and states unequivocably that a legislative licensing requirement which dictates where an education should be received as oppposed to what type of education should be obtained is in clear violation of the equal protection clause.

This anti-discriminatory requirement was echoed by the Illinois Supreme Court in its following decisions in *Love* and *Witte*. In declaring the Medical Practice Act of 1917 unconstitutional, the Court reasoned in *Love* that the 1917 Act discriminated against chiropractors and those practicing with a limited license where the Act required four years of education for a limited license as opposed to three years for a general license to practice medicine in all its branches. The Court ruled that it could not perceive of a person for this discrimination in educational requirements and thus declared it in violation of the equal protection clause of the Constitution. *People v. Love*, 298 Ill. 304, 132 NE 809 (1921).

It was the lack of any discriminatory feature in the 1923 Medical Practice Act which prompted the Court to declare that Act within constitutional bounds in *People v. Witte*, 315 Ill. 282, 146 NE 178 (1924). The Court specifically notes those features of the act which guarantee its fair and equal treatment of those governed by it. The Court states:

> It is provided that the provisions of the Act shall not be so construed as to discriminate against any system or method of treating human ailments, or against any medical college or professional school, college or institution teaching any system or method of treating human ailment, on account of any such system or method which may be taught or emphasized in such medical college or in any such professional school, college or institution.

A clear reading of the 1987 Medical Practice Act reveals the Act's unequal treatment of those governed by it. The Act allows for those educated as allopathic medical practitioners and chiropractors to practice the art of naprapathy, but denies those specifically educated in naprapathy from the practice of same. Furthermore, the Act's requirement that an education be received in a particular school or college as opposed to establishing a curriculum to be obtained in any school or college properly accredited to teach said curriculum, evidences an unjustifiable favoritism toward allopathic and chiropractic medicine and needless discriminates against all others.

The Illinois Supreme Court recognizes naprapaths property rights in the practice of their profession and the constitutional protection of same. It further notes that said right is a fundamental right of citizenship, yet suggests that this right may be unreasonably restricted and effectually terminated by the whims of the majority as expressed by the legislature. When a statutory classification significantly interferes with a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests. *Zablocki v. Redhail*, 434 U.S. 374, 98 S.Ct. 673, 54 L.Ed.2d 618 (1978). A statute enacted in pursuance of objects within the scope of the police power is valid when it applies equally and uniformally to all persons similarly situated, but it is in contravention of the equality clause of the Federal Constitution where the classification or discrimination made is unreasonable and has no substantial relation to the object of the Act. *McDougall v. Lueder*, 389 Ill. 141, 58 NE 2d 899 (1945).

Assuming it is the legislative purpose in enacting the 1987 act to establish minimum educational requirements of those practicing the various forms of healing arts, the legislature need not prescribe what school or college this education need be obtained, but rather the courses to be

taken and the education to be received. The legislature's overbearing and excessive, discriminatory requirements cannot be seen to operate fairly although similarly situated. Their effect is clearly to prohibit petitioners from the continuation of the practice of their profession. The question remains whether the legislature can prohibit an individual from continuing in his profession of over 50 years, taking from that individual his sole source of livelihood. The Illinois Medical Association, which has intervened in these proceedings as amicus curiae, has members numbering in the thousands and constitutes one of the strongest political action committees lobbying in the Illinois legislature. Historically, this group has a very dark record of actively opposing every competing form of healing art. One need only look to past Illinois decisions with regard to the Medical Practice Acts or to current legal proceedings wherein this group is involved, to find evidence of their strong prejudice against competing practices. The 1987 Act can be seen as nothing more than another attempt by this group to prohibit the existence of any competing practice and grant themselves a monoply in the field of healing arts. If the guarantees of the Constitution, the rights of the minority, the personal liberties of the individual are to have any meaning, the 1987 Medical Practice Act must be declared unconstitutional.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the decision of the Illinois Supreme Court in this case.

Respectfully submitted,

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APPENDICES

APPENDIX A

IN THE
SUPREME COURT OF ILLINOIS

Agenda 18—November 1988

Docket No. 66739

MARY ANN POTTS *et al.*,

Appellees,

v.

THE ILLINOIS DEPARTMENT OF REGISTRATION AND EDUCATION,

Appellant.

[Filed Apr. 20, 1989]

JUSTICE CLARK delivered the opinion of the court:

In this appeal we are presented with a constitutional challenge to the Medical Practice Act of 1987 (the Act) (Ill. Rev. Stat. 1987, ch. 111, par. 4400—1 *et seq.*), which provides for the licensure of doctors of medicine. The circuit court of Sangamon County found that the Act deprived the appellees of their property right in the practice of their profession without due process of law and held it to be unconstitutional as applied to the practice of napropathy. Appellant, the Illinois Department of Registration and Education, filed this direct appeal pursuant to Supreme Court Rule 302(a)(1) to challenge the court's ruling. (107 Ill. 2d R. 302(a)(1).) The Illinois State Medical Society was granted leave to file an *amicus curiae* brief in support of the appellant's position.

The appellees in this case, Mary Ann Potts and Irwin A. Kossack, are both naprapaths. Naprapathy, broadly defined, is "a therapeutic system of drugless treatment by manipulation depending on the theory that disease symptoms result from disorder in the ligaments and con-

nective issues." (Webster's Third New International Dictionary 1502 (3d ed. 1971).) In October 1984, Potts filed an application with the Illinois Department of Registration and Education (the Department) for a license to practice medicine without drugs or operative surgery under the Medical Practice Act. Ill. Rev. Stat. 1983, ch. 111, par. 4401 *et seq.*

At that time, section 2 of the Act provided:

> "No person shall practice medicine, or any of its branches, or midwifery, or any system or method of treating human ailments without the use of drugs or medicines and without operative surgery, without a valid, existing liense to do so." Ill. Rev. Stat. 1983, ch. 111, par. 4403.

Section 4 provided in part:

> "Each applicant for such examination shall:
>
> * * *
>
> 3. Designate specifically the name, location, and kind of professional school, college, or institution of which he is a graduate and the system or method of treatment under which he seeks, and will undertake, to practice * * *."

Ill. Rev. Stat. 1983, ch. 111, par. 4410.

Pursuant to statutory requirements, Potts indicated that she was a graduate of a naprapathic institution and desired to practice napraphy. On April 5, 1985, Potts was informed by the Department that her application had been denied as a matter of law based upon thhe Department's determination that the Medical Practice Act, as it existed at that time, did not contemplate the licensure of naprapaths. The Department indicated that based upon its interpretation of the Act, only osteopaths and chiropractors could be licensed to treat human ailments without drugs or surgery.

Potts filed a complaint for administrative review in the circuit court of Sangamon County, requesting judicial review of the Department's ruling. On administrative review, the circuit court ordered the Department to determine whether naprapathy was a system or method of treating human ailments which entitled proper applicants to licensure.

On the Department's motion, the trial court certified that the question of whether naprapathy was a system of treating human ailments as contemplated by the Medical Practice Act was a proper subject for interlocutory appeal pursuant to Supreme Court Rule 308(a) (107 Ill. 2d R. 308(a)). The appellate court granted the Department's petition for interlocutory review and held that the Department had erroneously interpreted the Medical Practice Act. It held that naprapathy was a system of treating human ailments within the purview of the Medical Practice Act and that naprapaths were eligible for examination and licensure. 145 Ill. App. 3d 960.

Subsequent to the appellate court's decision, the legislature enacted the Medical Practice Act of 1987 (Ill. Rev. Stat. 1987, ch. 111, par. 4400—1 *et seq.*) to regulate the practice of medicine in Illinois. Section 3 of the Act prohibits any person from practicing medicine unless he possesses a license issued under the Act. (Ill. Rev. Stat. 1987, ch. 111, par. 4400—3.) The Act provides for two classes of licenses: one which authorizes the practice of medicine in all its branches, and the other, which has been referred to as a limited license, which permits the treatment of human ailments without the use of drugs or operative surgery. (Ill. Rev. Stat. 1987, ch. 111, par. 4400—11.) Section 11(A) and (B) of the Act set out the minimum standards of professional education required under the Act for a license to practice medicine. (Ill. Rev. Stat. 1987, ch. 111, pars. 4400—11(A), (B).) Section 11(A) applies to the practice of medicine in all its branches, and requires graduation from a medical or osteopathic college as a condition of licensure. (Ill. Rev.

Stat. 1987, ch. 111, par. 4400—11(A).) Section 11(B) applies to the "treating [of] human ailments without the use of drugs and without operative surgery" and requires that applicants be graduates of a reputable chiropractic college. Ill. Rev. Stat. 1987, ch. 111, par. 4400—11(B).

Individuals not licensed pursuant to the Act are prohibited from diagnosing or treating human ailments. Section 49 provides in part:

> "If any person holds themselves out to the public as being engaged in the diagnosis or treatment of ailments of human beings; or suggests, recommends or prescribes any form of treatment for the palliation, relief or cure of any physical or mental ailment of any person with the intention of receiving therefor, either directly or indirectly, any fee, gift, or compensation whatsoever; or diagnoses or attempts to diagnose, operate upon, profess to heal, prescribe for, or otherwise treat any ailment, or supposed ailment, or another; or maintains an office for examination or treatment of persons afflicted, or alleged or supposed to be afflicted, by any ailment; or attaches the title Doctor, Physician, Surgeon, M.D., D.O. or D.C. or any other word or abbreviation to their name, indicating that they are engaged in the teratment of human ailments as a business; and does not possess a valid license issued pursuant to this Act, they shall be sentenced as provided in Section 59." (Ill. Rev. Stat. 1987, ch. 111, par. 4400—49.)

Pursuant to section 59, anyone violating the Act can be prosecuted for offenses ranging from a Class A misdemeanor to a Class 4 felony. Ill. Rev. Stat. 1987, ch. 111, par. 4400—59.

On June 15, 1987, the Department informed Potts that the Medical Practice Act of 1987 rendered the decision of the appellate court (145 Ill. App. 3d 960) moot and that pursuant to the new act, the Department lacked

statutory authority to issue licenses for the practice of naprapathy.

Appellees filed a two-count complaint challenging the application of the Medical Practice Act of 1987. Count I sought administrative review of the Department's interpretation of the new act; count II sought a declaratory judgment declaring the Medical Practice Act of 1987 unconstitutional as applied to naprapaths.

The circuit court of Sangamon County held that the Medical Practice Act of 1987 violates sections 1 and 2 of article I of the Constitution of the State of Illinois and the fourteenth amendment to the Constitution of the United States because it deprives the appellees of their property right to the practice of naprapathy without due process of law. We granted review. 107 Ill. 2d R. 302(a)(1).

Three issues are raised in this appeal: (1) whether the Medical Practice Act of 1987 deprives the appellees of their property right in the practice of napropathy without due process of law; (2) whether the Act violates Federal and State equal protection guarantees; and (3) whether the Act abridges a patient's right to choose a mode of treatment.

We first address the issue of whether the Medical Practice Act of 1987 violates the due process clauses of the United States and Illinois Constitution. As noted previously, the Act contemplates the licensure of only medical and osteopathic physicians to practice medicine in all its branches and chiropractic physicians to treat human ailments without the use of drugs or surgery; there is no provision in the Act for the licensure of naprapaths. (Ill. Rev. Stat. 1987, ch. 111, par. 4400—11.) The appellees contend that the effect of the statute is to deprive them of the right to practice their profession without due process of law. The Department contends that the statute was enacted to protect the public from

incompetent practitioners and is a valid exercise of the State's police power.

The starting point of our due process inquiry must be whether the statute purports to regulate a fundamental right. Appellees argue that the right to pursue a profession is a fundamental right and any statute which infringes upon that right must be examined under strict scrutiny. Under strict scrutiny, legislation which significantly interferes with the exercise of a fundamental right cannot be upheld unless it is supported by compelling State interests and is closely tailored to effectuate only those interests. (*Boynton v. Kusper* (1986), 112 Ill. 2d 356, 269.) The Department, on the other hand, urges us to apply the familiar rational basis test, citing *People v. Gurell* (1983), 98 Ill. 2d 194, as support for its position that the right to practice one's profession is not a fundametntal right. Under the rational basis test, a statute will be upheld if it bears a rational relationship to a legitimate legislative purpose and is neither arbitrary nor discriminatory. *Boynton v. Kusper* (1986), 112 Ill. 2d 356, 267.

Although not discussed in *Gurell*, this court in the past has referred to the right to pursue one's chosen profession as a "fundamental right[] of citizenship." (*People v. Love* (1921), 298 Ill. 304, 310; see also *Lasdon v. Hallihan* (1941), 377 Ill. 1987.) We note, however, that while the term "fundamental right" was used, the court applied the rational basis test in evaluating the challenged legislation. For example, in *Love* this court recognized the "right and power of the legislature to make reasonable requirements with reference to examination and qualifications to practice medicine," and noted that "[c]ourts can only interfere when such provisions and laws become arbitrary and unreasonable." (*Love*, 298 Ill. at 311.) Other cases have similarly applied the rational basis test to uphold legislation regulating occupations and professions. (See, *e.g.*, *Pozner v. Mauck* (1978), 73 Ill. 2d 250 (legislation upgrading licensing

requirements for insurance solicitors is a reasonable exercise of the State's police power); *Rios v. Jones* (1976), 63 Ill. 2d 488 (State licensing procedures requiring examination of foreign-educated physicians are a reasonable exercise of the State's police power); *Wineblad v. Department of Registration & Education* (1987), 161 Ill. App. 3d 827 (statutory amendment requiring national certification of licensed physician's assistants reasonably related to State's licensing scheme).) Accordingly, we find that the right to pursue a profession is not a fundamental right for due process purposes and legislation infringing upon that right need only be examined under the rational basis test. See *People v. Gurell* (1983), 98 Ill. 2d 194.

We next consider whether the statute bears a rational relationship to a proper legislative purpose. Both parties agree that the State has a legitimate interest in regulating medical professionals in order to protect the public welfare and that it is within the power of the legislature to set reasonable licensing requirements for individuals practicing medicine in Illinois. Appellees contend, however, that the Medical Practice Act of 1987 goes beyond mere regulation and effectively prohibits the practice of naprapathy.

We do not agree. Upon review, we find nothing in the Act which prohibits the practice of naprapathy. Section 11(B) of the Act, which applies to persons "[t]reating human ailments without drugs and without operative surgery" (Ill. Rev. Stat. 1987, ch. 111, par. 4400—11(B)), does not restrict the practitioner to a specific method of treatment. Unlike the prior Medical Practice Act (Ill. Rev. Stat. 1983, ch. 111, par. 4401 *et seq.*) which restricted a licensee under a limited license to the practice of the system or method of treatment which he specifically designated in his application as the one he would undertake to practice (*People v. Witte* (1924), 315 Ill. 282, 286), the Medical Practice Act of 1987 contains no such provision. Under the present statute, an applicant

need only designate the "category under which [he] seeks, and will undertake, to practice" (Ill. Rev. Stat. 1987, ch. 111, par. 4400—9(C)), not the system or method of treatment he will administer. Thus, under a plain reading of the statute, a graduate of a chiropractic college licensed to treat human ailments without drugs and without operative surgery may employ the drugless therapy of his choice. Similarly, since physicians licensed under section 11(A) of the Act are necessarily permitted to employ the same agencies for healing as are used by the restricted practitioners (*People v. Witte* (1924), 315 Ill. 282, 287), they may also practice naprapathy.

Having determined that practitioners holding limited licenses pursuant to section 11(B) can practice naprapathy, we must consider whether it is reasonable for the legislature to require that all drugless practitioners be graduates of chiropractic colleges. Appellees maintain that there is no rational basis for requiring that naprapaths study the theories and therapeutics of a competing school of healing in order to receive a license to practice medicine. They argue that it would be more reasonable for the legislature to prescribe requirements for naprapaths.

We note at this point that the appellees have a substantial burden in establishing their position. A statute is presumed to be valid and the burden is on the party challenging its validity to prove that it is irrational. (*People v. Gurell* (1983), 98 Ill. 2d 194, 204-05.) As long as there is a conceivable basis for finding a rational relationship, the legislation will be upheld. *Harris v. Manor Healthcare Corp.* (1986), 111 Ill. 2d 350, 368.

Upon review, we find that the appellees have not sustained their burden. We recognize that naprapaths have a property right in the practice of their profession and that that right is entitled to due process protection. (*Coldwell Banker Residential Real Estate Services of Illinois, Inc. v. Clayton* (1985), 105 Ill. 2d 372, 397.) How-

ever, as we stated in *Rios v. Jones* (1976), 63 Ill. 2d 488, 497:

> "The fact that the plaintiffs possess property rights and are entitled to due process protection * * * does not mean that those rights cannot be affected by State legislation. As the United States Supreme Court declared in *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 792, 44 L. Ed. 2d 572, 588, 95 S. Ct. 2004, 2016: '[T]he States have a compelling interest in the practice of professions within their boundaries, and * * * as part of their power to protect the public health, safety, and other valid interests they have broad power to establish standards for licensing practioners and regulating the practice of professions.' The demands of due process are proportional to the weight of the interest being protected in balancing that interest against the countervailing interests of society. (*Powell v. Jones*, 56 Ill. 2d 70, 78.) If, after balancing these interests, the State's exercise of its police power is deemed to be reasonable, the legislation in question must be upheld." 63 Ill. 2d at 497.

Having balanced the appellees' interests in the practice of naprapathy against the State's interest in protecting the public from unqualified medical practitioners, we find that the appellees' interests are not sufficient to render the statute unconstitutional. The State has a substantial interest in promoting the general welfare by licensing physicians. (*Rios v. Jones* (1976), 63 Ill. 2d 488, 497.) The legislature is presumed to have investigated the question and ascertained what is best for the good of the profession and the good of the people among whom it is practiced. (*People v. Love* (1921), 298 Ill. 304, 312.) The question of whether the course chosen by the legislature to achieve a desired result is either wise or the best means available is not a proper subject of judicial inquiry. (*Garcia v. Tully* (1978), 72 Ill. 2d 1, 10.) It is for the legislature, not the courts, to balance the advan-

tages and disadvantages of the requirements. *Williamson v. Lee Optical of Oklahoma, Inc.* (1955), 348 U.S. 483, 487, 99 L. Ed. 563, 571, 75 S. Ct. 461, 464.

Additionally, we note that the appellate court's decision in *Potts v. Department of Registration & Education* (1986), 145 Ill. App. 3d 960, requiring that the Department examine and license naprapaths, was issued approximately 10 months before the Medical Practice Act of 1987 was enacted. In amending the Medical Practice Act we presume that the General Assembly was aware of judicial construction of the earlier versions of the statute (*People v. Badoud* (1988), 122 Ill. 2d 50, 55) and that it not only recognized the effect the new act would have upon naprapaths but diliberately chose that course of action. For the reasons stated herein, we find that section 11(B) of the Medical Practice Act of 1987, in requiring that applicants for limited licenses be graduates of schools of chiropractic, does not violate due process of law.

We next consider the contention that the Medical Practice Act of 1987 discriminates against the appellees in violation of the equal protection provisions of the Federal and State Constitutions. The appellees contend that they are being denied equal protection of the law because chiropractors may be licensed to practice medicine pursuant to section 11(B) whereas the same privilege has been denied to naprapaths.

Under the traditional equal protection analysis used by this court in assessing both Federal and State equal protection challenges, a statutory classification must be reasonable and must rest on some ground of difference having a fair and substantial relation to the object of the legislation, so that persons similarly situated are treated alike. (*Jenkins v. Wu* (1984), 102 Ill. 2d 468, 477.) In the absence of a fundamental right, the legislature may even differentiate between persons similarly situated if there is a rational basis for doing so. *People v. Esposito* (1988), 121 Ill. 2d 491, 501.

The classification at issue is based upon the education and training of the practitioners. Chiropractors, as a class, have characteristics different from naprapaths. These differences are evidenced in their theories as to the nature of disease, their education and the modalities they employ in their treatments. The enactment of section 11(B) indicates that the General Assembly has determined that only graduates of accredited chiropractic colleges possess the degree of skill and training necessary to practice medicine without the use of drugs or surgery in Illinois. It is possible that naprapaths are just as competent in the art of healing as are chiropractors. However, the legislature is not obligated to permit everyone who might be competent to treat human ailments to do so. (See *Sutker v. Illinois State Dental Society* (7th Cir. 1987), 808 F.2d 632, 636.) A State legislature may deal with matters of health and safety "one step at a time," addressing itself to the problem which it sees as being most acute and neglecting the others. (*Williamson v. Lee Optical of Oklahoma, Inc.* (1955), 348 U.S. 483, 489, 99 L. Ed. 563, 573, 75 S. Ct. 461, 465.) We find the classification to be reasonably related to the legitimate governmental objective of protecting the public from unqualified medical practitioners. Consequently, we hold that the statute does not violate equal protection guarantees.

Additionally, appellees allege that the Act abridges the rights of patients to choose a mode of treatment. We disagree. The Act does not preclude a patient from receiving naprapathic therapy, it only requires that those administering the treatment be licensed under the Act. As previously stated, such a requirement is a valid exercis of the police power of the State.

For the foregoing reasons, we uphold the constitutionality of section 11 of the Medical Practice Act of 1987. The judgment of the circuit court is reversed.

Judgment reversed.

WARD and CALVO, JJ., took no part in the consideration or decision of this case.

ILLINOIS SUPREME COURT
JULEANN HORNYAK, Clerk
Supreme Court Building
Springfield, Ill. 62706
(217) 782-2035

May 26, 1989

Mr. Timothy J. Londrigan
Londrigan & Londrigan
524 East Capitol
Springfield, IL 62701

No. 66739—Mary Ann Potts, et al., etc., appellees, v. Department of Registration and Education, et al., etc., appellants. Appeal, Circuit Court (Sangamon).

The Supreme Court today DENIED the petition for rehearing in the above entitled cause.

Ward and Calvo, JJ., took no part.

The mandate of this Court will issue to the appropriate Appellate Court and/or Circuit Court or other agency on June 5, 1989.

IN THE
SUPREME COURT OF ILLINOIS

No. 66739

Appeal, Circuit Court Sangamon
MARY ANN POTTS, *et al., etc.*,
Appellees,
v.
DEPARTMENT OF REGISTRATION AND
EDUCATION, *et al., etc.*,
Appellants.

[Filed June 2, 1989]

ORDER

This matter has come for consideration upon the motion of appellees to stay the mandate of this Court pending appeal or application for *certiorari* in the United States Supreme Court.

IT IS ORDERED that the mandate of this Court in the above cause is stayed pending the filing of a notice of appeal or an application for *certiorari* or the expiration of the period within which said application or notice may be filed. If *certiorari* is applied for or notice of appeal filed, the mandate of this Court shall, upon proof of such filing being made by affidavit filed with the clerk of this Court, be further stayed pending resolution by the United States Supreme Court of such application or appeal. If no such affidavit is filed, the mandate shall, without further order, issue upon the expiration of the time within which appeal or *certiorari* may be sought.

ENTER:

/s/ [Illegible]
Justice, Supreme Court of Illinois

APPENDIX B

THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, STATE OF ILLINOIS

No. 85-MR-128

MARY ANN POTTS,
Plaintiffs,

v.

REGISTRATION AND EDUCATION,
Defendants.

No. 87-MR-166

MARY ANN POTTS and IRWIN A. KOSSAK,
Doctors of Naprapathy
Plaintiffs,

v.

STATE OF ILLINOIS, DEPARTMENT OF REGISTRATION AND EDUCATION, GARY L. CLAYTON, DIRECTOR,
Defendants.

[Filed February 18, 1988]

ORDER

Upon motion by defendants for consolidation of the above-captioned matters, and by agreement of plaintiffs, the Court orders the above-captioned matters consolidated.

Furthermore, the parties having agreed and the Court finding the issue herein to be whether the Medical Practice Act of 1987 is unconstitutional as applied to the practice of Naprapathy, the Court makes the following findings in relation thereto:

1. That motion of the Illinois Medical Society to be allowed to file Amicus Curiae brief with this Court is

improper in that the Illinois Medical Society has no interest in the determination of the issue as stated above which would be superior to that of any citizen of this State.

2. That an actual controversy exists between the parties.

3. That insufficient cause has been shown to hold the Department of Registration and Education, by its Director, in contempt of court for refusing to follow a previous Order of this Court in *Potts v. Department of Registration and Education*, which ordered the Department to examine and license Naprapaths, accordingly plaintiffs' motion in relation thereto is denied.

4. That Naprapathy is a profession and a form of healing art, that Naprapaths have a property right and a protected interest therein, and have standing to bring suit in this matter. *People v. Love*, 298 Ill. 304 (1921); *People v. Witte*, 315 Ill. 282 (1924); *Potts v. Department of Registration and Education*, 145 Ill.App.3d, 960 (1986).

5. That the Medical Practice Act of 1987 is unconstitutional as applied to the practice of naprapathy, in that plaintiffs are denied their property interest in the practice of naprapathy without due process of law.

IT IS THEREFORE ORDERED and a Declaratory Judgment is granted declaring that the Medical Practice Act of 1987 violates the Constitution of the State of Illinois, Sections I and II, and the Fourteenth Amendment to the Constitution of the United States, and is unconstitutional as applied to the practice of Naprapathy.

IT IS FURTHER ORDERED that the Medical Practice Act of 1987 is unconstittuional as applied to the practice of naprapathy and ineffective to prevent plaintiffs or any of them from practicing the healing art known as Naprapathy, and as a result thereof, the defendants and all officers thereof are restrained from

maintaining or entertaining any action in any court based upon the practice of Naprapathy by the Plaintiffs in this complaint, as being in violation of the Medical Practice Act of 1987.

SO ORDERED.

/s/ Simon L. Friedman
SIMON L. FRIEDMAN
Judge

Date: 2/18/88